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Committee on Economic, Social and Cultural Rights

Sixty-fourth session

Summary record (partial)* of the 29th meeting

Held at the Palais des Nations, Geneva, on Monday, 24 September 2018, at 10 a.m.

Chair: Ms. Bras Gomes

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 10.05 a.m.

Opening of the session

1. **The Chair** declared open the sixty-fourth session of the Committee on Economic, Social and Cultural Rights.

2. **Ms. Hicks** (Office of the United Nations High Commissioner for Human Rights (OHCHR)) said that she wished to convey to the Committee the greetings of the new High Commissioner for Human Rights, Michelle Bachelet.

3. The Office of the United Nations High Commissioner for Human Rights had begun to implement its Management Plan for 2018–2021. The Plan contained a strong commitment to elevating economic, social and cultural rights and a special focus on two related results areas, namely housing and land rights, and the right to health. The Office intended to work closely with the Committee in those areas and would provide support in the Committee's drafting of its general comment on economic, social and cultural rights and land in 2019. Guidance on that issue was in high demand from colleagues in the field.

4. In the area of health, following the recommendations of the High-level Working Group on the Health and Human Rights of Women, Children and Adolescents, the Office had signed a Framework for Cooperation with the World Health Organization at the end of 2017. Under that Framework, the two entities would hold a joint meeting with a number of treaty body members in Geneva in November 2018.

5. One of the core priorities of the Management Plan was the integration of human rights into sustainable development. In that context, the Office welcomed the Committee's engagement with the Sustainable Development Goals and its inclusion of them in its questions and recommendations to States parties.

6. At the 2018 high-level political forum on sustainable development, many of the voluntary national reviews had made reference to the human rights mechanisms. Some Member States had urged that human rights and development should remain separate and be addressed in Geneva and New York respectively.

7. The theme of the 2019 high-level political forum would be "Empowering people and ensuring inclusiveness and equality". The forum, which provided an opportunity to highlight the interlinkages between development and human rights, would focus on the progress made in relation to Sustainable Development Goals 10 and 16, as well as 4, 8, 13 and 17, all of which overlapped with economic, social and cultural rights. The Committee was in a position to play a proactive role in the global accountability processes with respect to the implementation of the Goals. It might perhaps consider preparing a short authoritative text on the "leave no one behind" principle in connection with economic, social and cultural rights and the 2030 Agenda.

8. The Office was seeking to enhance the promotion and protection of civic space and would welcome recommendations from the Committee in that regard. It welcomed the statement on human rights defenders that the Committee had released in 2016 and was looking to engage further on the issue, including in the context of a high-level plenary meeting convened following the adoption of a General Assembly resolution on human rights defenders. The meeting, to be held in December 2018, would be sponsored by the Secretary-General.

9. The Office was also aiming to improve its work on prevention and to expand the global constituency for human rights. The annual reports of the Secretary-General to the Human Rights Council had benefited greatly from the Committee's normative guidance and recommendations. The work of the Committee would be highlighted at an intersessional meeting of the Human Rights Council on dialogue and cooperation on human rights and the 2030 Agenda. While some stakeholders tended to equate the Sustainable Development Goals with economic, social and cultural rights, the Office was committed to ensuring that human rights were at the core of implementation of the Goals.

10. At its sixty-fourth session, the Committee would examine the reports of six States parties, including the initial reports of Cabo Verde, Mali and South Africa. Its scheduled

meeting with the European Committee of Social Rights was a welcome development in the context of increased cooperation with regional mechanisms. The Committee would hold a day of general discussion on the right to enjoy the benefits of scientific progress and its applications and other provisions of article 15 on the relationship between science and economic, social and cultural rights. Scientific and technological advances brought with them both unprecedented opportunities and potentially serious human rights challenges, including the digital divide in access to technology.

11. The thirtieth meeting of the Chairs of the human rights treaty bodies had focused on, inter alia, preparations for the 2020 review of the treaty body system. The Chairs had met with a broad range of stakeholders and with the Secretary-General, who had expressed his strong support for treaty bodies. They had also agreed to propose the appointment of focal points in each treaty body to contribute to a common position ahead of the review.

Adoption of the agenda

12. *The agenda was adopted.*

13. **Mr. Sadi** said that he would be interested to hear his fellow members' views on whether the Committee ought to pronounce upon world events that occurred in intersessional periods.

14. **The Chair** said that the question was an interesting one that the Committee would discuss further during the current session.

The public part of the meeting rose at 10.30 a.m.

United Nations E/C.12/2018/SR.30

Economic and Social Council

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27 September 2018

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Committee on Economic, Social and Cultural Rights
Sixty-fourth session

Summary record of the 30th meeting
Held at the Palais des Nations, Geneva, on Monday, 24 September 2018, at 3 p.m.

Chair: Ms. Bras Gomes

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The meeting was called to order at 3.10 p.m.

Substantive issues arising from the implementation of the International Covenant on Economic, Social and Cultural Rights

Submissions by national human rights institutions and non-governmental organizations

1. **The Chair** invited representatives of national human rights institutions and non-governmental organizations to address the Committee, noting that some of them would be taking part in the meeting via video link.

Argentina

2. **Ms. Cárdenas** (Centro de Estudios Legales y Sociales), speaking via video link, said that structural limitations on the enjoyment of economic, social and cultural rights by a majority of the population had worsened in recent years owing to political and economic measures that had led to the concentration of capital in certain sectors, soaring public debt and disproportionately adverse effects on low-income groups as a result of cuts in public spending on housing and social protection. Moreover, the elimination of subsidies for gas, electricity and transport had led to price hikes for those services. Since 2016, the price of public services had increased by between 200 and 1,000 per cent. Unemployment had risen from 5.9 per cent in the third quarter of 2015 to 9.1 per cent in the first quarter of 2018. In addition, the old-age pension and social security systems had been scaled back. The bleak situation was compounded by severe inflation, which was estimated at over 40 per cent in 2018, and plummeting purchasing power.

3. In April 2018, the situation had been further aggravated by a currency exchange crisis that had seen the national currency devalued by more than 100 per cent against the United States dollar. The Government had committed to reimbursing an International Monetary Fund loan by means of a drastic fiscal adjustment intended to achieve a balanced budget in 2019. As part of the austerity measures, the Government had recently restructured the Cabinet, downgrading the ministries responsible for policies that were particularly relevant to economic, social and cultural rights. The Committee would find further information on topics such as migrants, campesinos, mental health, abortion and the right to work in the seven alternate reports produced by the centre on whose behalf she was speaking.

4. **Ms. García Rey** (Amnesty International), speaking via video link, said that the Committee's review of Argentina was taking place in the context of austerity measures that were having a huge impact on the enjoyment of economic, social and cultural rights in the country. Not only had Argentina recently lost a historic opportunity to move towards the decriminalization of abortion, despite considerable civil support for the bill, but it had also taken backward steps in respect of access to legal abortion, the enjoyment of sexual and reproductive rights and access to services in general.

5. In a country where the rate of unwanted teenage pregnancies was 41.9 for every 1,000 girls aged 15 to 19 years and where a girl aged 10 to 14 gave birth every three hours, it was vital to ensure that young people had access to comprehensive sexual education, legal abortion, counselling and treatment for sexually transmitted diseases, and that their privacy and the principle of informed consent were respected when they sought such services. The Government's announcement that it would, in 2018, promote a bill amending the Criminal Code gave it an opportunity to align Argentine legislation with international human rights norms and decriminalize abortion for both women and medical professionals.

6. Significant changes had taken place in the extractive sector over the past 20 years. The current Government had removed duties on mining exports and introduced incentives for oil and lithium companies. However, indigenous communities, such as the one in Salinas Grandes, claimed that exploration and exploitation permits had been granted on their territory without prior consultation. Elsewhere, the Government was playing on national security fears to limit migration and repress demonstrations by the Mapuche people. In the light of the Government's regressive policies, she would ask the Committee

to remind the State party of its obligations with regard to economic, social and cultural rights.

7. **Mr. Bullrich** (Defensoría Edmundo Rice), speaking via video link, said that the Government's efforts in the education sector should not be limited to expanding coverage but should also seek to improve access and retention rates, as well as provide youngsters with opportunities to move on to higher education or enter the labour market. An average of one in ten secondary students repeated a year at school, though there was a marked discrepancy in the repetition rate between private and public schools. Almost one in four students either failed or dropped out, with the rate varying significantly among provinces. The percentage of students who left during the school year without requesting admission to another school ranged from 1 to 5.5 per cent. The average national expenditure per secondary student per year was 41,000 pesos, and 90 per cent of spending went on teachers' salaries, leaving little for investment in infrastructure or policy implementation. With regard to the quality of education, the State party should fulfil the commitments set out in its 2008 document "Educational Goals for 2021".

8. **Ms. Liebenberg** (Country Task Force) said that she would be interested to know what the NGOs thought should be the focus of the Committee's questions to the State party on the decriminalization of abortion.

9. **Mr. Uprimny** (Country Rapporteur), noting that the State party claimed that Decree No. 70/2017 did not modify the thrust of its migration policy, asked what recent amendments to the Migration Act were of concern to NGOs.

10. **Ms. García Rey** (Amnesty International) said that the bill on abortion, which had enjoyed broad consensus and would have guaranteed access to abortion in the first 14 weeks of pregnancy and after 14 weeks in the event of rape, fetal abnormality or risk to the mother, had been rejected by the Upper House without an alternative text being proposed. However, the announced review of the Criminal Code represented another opportunity to, at a minimum, ensure that women and health-care professionals were not prosecuted for undergoing or performing an abortion. The problem was that the anti-rights groups that were largely behind the rejection of the decriminalization bill — including the Catholic Church — were even attacking legal abortion and were actively campaigning against comprehensive sexual and reproductive health education. It was important not to permit the provinces to use the country's federal structure to skirt their obligations with regard to the realization of rights.

11. Regarding migration, the concern was that Decree No. 70/2017 essentially criminalized migration, hindered access to the country — especially if a migrant had a criminal record — and no longer recognized family reunification as a right. Moreover, migrants in an irregular situation could henceforth be deprived of their liberty, and mechanisms intended to regularize migration status were instead being used to expel migrants.

12. **Mr. Mancisidor de la Fuente** (Country Task Force) asked what the main ways of improving the quality of education might be, whether there were disparities in access to the Internet and whether he was correct in understanding that there was no indigenous programming in public media.

13. **Mr. Bullrich** (Defensoría Edmundo Rice) said that quality education should include measures for the personal development of students, academic success and progression to higher education. The inclusiveness of education was another key factor, as many children with disabilities experienced difficulties pursuing their studies, especially from the secondary level onward. Notwithstanding the fact that it was the provinces that were responsible for education, steps should be taken to ensure that the decisions and procedures of the Federal Council for Culture and Education were enforced.

14. **Ms. García Rey** (Amnesty International) said that the 2015 amendments to legislation regulating the media had introduced a radio licence, which was not accessible to indigenous communities. The disparities in access to the Internet were a consequence of a monopoly among service providers.

15. **Mr. Uprimny** asked how civil society viewed the Government's argument that lifting duties on mining exports would stimulate growth and generate income that could be invested in social reforms.

16. **Ms. Miguens** (Centro de Estudios Legales y Sociales), speaking via video link, said that there was no tangible evidence that the lifting of export duties had any medium-term benefits for economic growth or investment. On the contrary, the progressive decrease in such duties over the past two years had not yielded any concomitant increase in investment. The duties had been an indispensable source of income that underpinned social protection schemes.

17. **Mr. Verzeñassi** (Instituto de Salud Socioambiental) said that, over the past 20 years, the Government had set up an agro-industrial model based on genetically modified organisms and the intensive use of pesticides, to the detriment of family farming and the environment. As a consequence, the soil, air, waterways, food and even human beings had been contaminated. Traces of pesticide had been found in the blood and urine of people living in fumigated areas, which also had higher rates of miscarriage, birth defects and cancer. The Special Rapporteur on the right to food had noted the problem during her visit to the country. The Government was aware of the harm being caused and yet it continued to approve the use of genetically modified organisms and pesticides that were banned elsewhere.

18. **Mr. Queles** (Red de Abogados de Pueblos Fumigados) said that the situation described by the previous speaker led to violations of economic, social and cultural rights, such as the rights to health, food and freedom, inasmuch as people were prevented from choosing safe food options. Furthermore, the Government failed to apply its own environmental laws, which provided for mandatory environmental impact assessments prior to the launch of potentially harmful activities. The Inter-American Court of Human Rights, in its advisory opinion OC-23/17, had recognized the connection between the protection of the environment and the realization of human rights. Accordingly, he requested the Committee to urge Argentina to apply environmental law, to prioritize the rights to food and health and to re-categorize pesticides using the classification developed by the World Health Organization (WHO) and the Food and Agriculture Organization of the United Nations.

19. **Ms. Ríos** (Fundación InterAmericana del Corazón Argentina) said that the Government had downgraded the Ministry of Health to a State secretariat, which entailed a budget cut and a loss of decision-making power that would invariably affect health policy. In Argentina, nearly 60 per cent of the population was overweight and a fifth of that group was obese. Obesity among adolescents was rising, while the obesity rate among children under 5 years of age was the highest in Latin America. Children under 12 years of age were exposed to over 60 commercials for unhealthy food per week and Argentina had no regulations on the advertising of such products to protect children from abusive marketing. Furthermore, the consumption of sugar was three times the amount recommended by WHO. Yet there was no obligation to include sugar content in nutritional tables. The information provided under current food labelling rules was not clear and was useless for making healthy choices. Moreover, false claims by companies prevented the adoption of effective policies on front-of-package labelling.

20. A quarter of the population of Argentina and around 24 per cent of teenagers, many of them girls, smoked tobacco. Tobacco consumption accounted for just over 13 per cent of deaths nationwide. Existing restrictions on tobacco marketing and regulations concerning tobacco were clearly ineffective.

21. The Committee might wish to call on the Government of Argentina to restrict the marketing and promotion of unhealthy foods and drinks; adopt a front-of-pack labelling policy for such products; ban all marketing, promotion and display of tobacco products and tobacco company sponsorship; and ratify the WHO Framework Convention on Tobacco Control.

22. **Mr. Auletta** (Equipo Nacional de Pastoral Aborigen) said that violence and discrimination against indigenous peoples in Argentina had risen significantly in recent years. The continued failure to appoint a national ombudsman was a matter of concern.

Officials of the Ombudsman's Office previously working on indigenous affairs had been transferred to other posts and one lawyer working in that field had been dismissed from the Office. Act No. 26160, regarding the possession and ownership of lands traditionally occupied by indigenous peoples, had still not been fully implemented, despite having entered into force in 2016. A large number of legal actions had been brought under the Act, particularly in connection with the Great Reserve of El Impenetrable Mowitob, in Chaco Province, and Lhaka Honat, in Salta Province. The right of indigenous peoples to give their free, prior and informed consent to the activities of actors in the extractive industries was being systematically violated. The public hearings held in that regard were inadequate and failed to make provision for input from representative bodies of indigenous peoples. Despite government claims that there were no protocols governing consultations, the "Kachi Yupi" protocol had been implemented by the Equipo Nacional de Pastoral Aborigen in Salinas Grandes, in Jujuy Province. No reparations had been received by communities for the environmental and health damage caused by the exploitation of natural resources.

23. The Government had issued a decree ordering the dismantling of the simplified tax regime for the farming sector, under which indigenous and campesino farmers and their families enjoyed pension and health insurance coverage. Such a move would have a negative impact on traditional farming methods and food security. Meanwhile, the rate of deforestation — carried out with authorization granted without prior consultation with local communities — had risen significantly, and the related environmental pollution had increased dramatically. The loss of ecosystems was hindering the intergenerational transmission of indigenous cultures and making it more difficult for artisans to find raw materials. Planned reforms to the Code of Criminal Procedure would prevent indigenous communities from bringing any class actions to challenge that state of affairs. Over 60,000 families, many of them members of indigenous groups, were currently involved in disputes over ownership of land.

24. Scant effort was begin made to provide bilingual and intercultural education and the content of educational programmes in no way reflected indigenous cultures. Although an autonomous education council for indigenous peoples had been set up, it had no influence over national public education policy. Indigenous mother tongues were declining at an alarming rate and there were few posts for indigenous teaching staff. A number of key public bodies working with indigenous peoples in the fields of agriculture, social security and the fight against discrimination had been hit by significant staffing cuts.

25. **Mr. Roncagliolo** (International Disability Alliance), speaking on behalf of the Federación Argentina de Instituciones de Ciegos y Ambliopes, the Mesa de Trabajo en Discapacidad y Derechos Humanos, the Observatorio de Salud Mental y Derechos Humanos and the Red por los Derechos de las Personas con Discapacidad, said that only around a third of all persons with disabilities currently held a valid single-disability certificate, a document that gave them rights in the areas of transport, medication, health, rehabilitation and inclusive education.

26. Unemployment among persons with disabilities stood at 85 per cent. The legal recruitment quota for persons with disabilities remained unfilled. Funding for programmes offering persons with disabilities training and help in finding a job had been reduced. The Government had failed to comply with a court order instructing it to reinstate over 170,000 non-contributory pensions that it had stopped paying. A number of officials of the national disability agency had been dismissed and some of its provincial offices had been closed down. Payments to persons with disabilities made under the Incluir Salud health programme had been delayed. Involuntary and illegal placements in mental health institutions, sometimes with fatal consequences, were widespread. There was a lack of accessible services in public hospitals and health centres and the sexual and reproductive health rights of women with disabilities were being violated. Persons with disabilities were being driven ever deeper into poverty owing to unemployment and the low level of both their incomes and their social security benefits.

27. **Ms. Morel** (Fundación Plurales) said that poverty had reached alarming levels in Argentina, above all affecting women members of communities living in isolated rural areas. Such communities faced numerous bureaucratic and economic obstacles when attempting to assert ownership of their ancestral lands or access the natural resources found

on them, and subsequently to obtain access to justice. Moreover, with the advent of Decree No. 820/2016, it had become easier for foreign individuals and legal entities to acquire land, in clear violation of article 75 of the Constitution on the recognition of the indigenous peoples of Argentina. Furthermore, the Government had failed to implement Act No. 26160 and Act No. 27400, which suspended evictions of indigenous communities from their ancestral lands, and Act No. 26331, on the protection of native forests. In many cases, the water found on the lands of indigenous communities had been contaminated with chemicals used in the extractive and farming industries. At least one million rural dwellers lived in housing not connected to the mains water system and many had to pay as much as six times more for a litre of water than consumers in urban areas.

28. **Ms. de León Lascano** (Fundación Plurales) said that the lack of access to natural resources undermined grassroots-level food sovereignty. Owing to government cutbacks, it was becoming increasingly difficult for families to collect native seeds that would allow them to grow good quality food at a relatively low cost. As a result, rural dwellers were being forced to take precarious temporary jobs, sometimes in exploitative conditions. In total, 70 per cent of women rural dwellers were currently employed in such work. The State had done little to tackle sexist and patriarchal attitudes towards rural women. The rates of gender-based violence and discrimination, femicide, teenage pregnancy and maternal mortality had soared in rural areas. Through its policy of evicting and uprooting rural communities, the Government had forced rural dwellers into an insecure and perilous existence on the outskirts of the cities.

29. **Mr. Uprimny** asked whether there had been any discussion in Argentina of the possibility of introducing taxes on sugary drinks or foods, or of increasing taxes on tobacco products.

30. **Mr. Mancisidor de la Fuente** asked why the number of indigenous persons in primary, secondary and higher education in Argentina had fallen so drastically. He said that he would be interested to hear to what extent provision was made within the State education system for indigenous mother tongues.

31. **Ms. Liebenberg** asked whether indigenous communities and small farmers and their families in Argentina were being evicted from their lands because the relevant legislation protecting them was not being effectively implemented, or because there were shortcomings in the corresponding normative framework.

32. **Ms. Rios** (Fundación Interamericana del Corazón) said that the measures to reduce the consumption of sugary drinks and tobacco through taxation proposed in the report of the Fundación Interamericana del Corazón were highly cost-effective. However, recent efforts to introduce a tax on sugary drinks had floundered in the face of opposition from sugar producers and soft drinks manufacturers. The impact of a move in 2016 to increase the price of Argentine tobacco by 50 per cent had been entirely offset by inflation. More recent tax reforms introduced by the Government relating to cigarettes had not had any effect on tobacco consumption.

33. **Mr. Auletta** (Equipo Nacional de Pastoral Aborigen) said that the introduction of bilingual intercultural education in Argentina had stalled on account of budgetary constraints and a lack of political will on the part of the national authorities. The curriculum used in the formal education system referred to only mainstream Argentine culture and promoted a uniform national identity that did not reflect the cultural diversity of the country's indigenous communities. Moreover, the negative rhetoric used by some political figures did little to encourage the roll-out of bilingual intercultural education in the country or to promote the inclusion of indigenous peoples.

34. **Ms. Morel** (Fundación Plurales) said that the greatest problems facing indigenous peoples in Argentina stemmed from the non-application of laws designed to protect their rights and their ancestral lands. Despite Act No. 26160 constituting an emergency measure that was to be applied with immediate effect, certain provincial courts neglected to do so, thereby denying indigenous communities access to justice. Consequently, judicial or administrative decisions ordering the removal or eviction of indigenous communities from their ancestral lands, including native forests, went unchallenged and were more often than not enforced. The right of indigenous communities to be consulted prior to the national

authorities allowing extractive or forestry activities to take place on their ancestral lands was likewise flouted in the majority of cases.

35. **Mr. De Schutter** said it was his impression that Decree No. 820/2016, which was supposed to protect communities against land-grabbing, did not apply throughout the national territory. It would be useful to hear more about the shortcomings associated with that decree and the protection that it offered.

36. **Mr. Sadi** said that, while there was strong evidence to suggest that the consumption of tobacco and unhealthy foods had a detrimental effect on health and ought to be discouraged, that matter fell outside the Committee's purview. It should be raised instead with the World Health Organization, which had the authority to take action.

37. **Ms. Ríos** (Fundación Interamericana del Corazón — Argentina) said that, while the World Health Organization was indeed the body competent to address the medical aspect of the issue, the Committee was competent to address violations of related rights, such as the right of consumers to information. The Committee might consider urging the Government of Argentina to take more restrictive measures to protect public health and to reduce the risk factors associated with chronic non-communicable diseases.

Mali

38. **Ms. Sanou** (Coalition Malienne des Défenseurs des Droits Humains) said that, in recent years, restrictions had been introduced concerning the freedom of expression and the freedom to protest. Human rights defenders were unable to move around the country and had been forced to relocate to the south of Mali because of security challenges.

39. Measures should be taken to transpose the international legal instruments ratified by Mali, in particular the Rome Statute of the International Criminal Court, into domestic legislation. Cooperation with the Court should be increased to facilitate the granting of reparations relating to economic, social and cultural rights, in particular the restoration of cultural sites and heritage sites. Legislation protecting victims and witnesses should be adopted, together with a framework strengthening the justiciability of human rights and supporting legal actions brought by victims. The Government should ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. Lastly, a decree should be adopted to set out the procedures for implementing Act No. 2018-003 of 12 January 2018 on human rights defenders, which provided protection for women defenders and defenders with disabilities in particular, and the mechanism for protecting defenders should be allocated sufficient human, material and financial resources.

40. **Mr. El Moctar** (Plate-forme Droits Economiques, Sociaux et Culturels du Mali) said that, currently, the situation in Mali regarding all the rights covered by the Covenant was extremely problematic. Legislative measures should be adopted that made youth employment a top priority for the Government and that took into account all the social aspects of the issue and provided for funding mechanisms. Unemployed young graduates should be given access to unemployment benefit, in line with article 20 of the Social Security (Minimum Standards) Convention, 1952 (No. 102) of the International Labour Organization, an instrument to which Mali should become a party. The provisions of the national social protection policy and action plan should be effectively implemented. Steps should be taken to significantly increase the processing of agricultural produce within Mali. Funds providing technical support and guarantees relating to housing should be set up as soon as possible to reduce related costs and interest rates. It was essential that women should enjoy the right to have access to, and should be able to manage, land without discrimination.

41. Medicines and health care designed to prevent malaria should be provided free of charge. Legislative measures should be adopted to protect the right to health within the context of costs that were rising as a result of the privatization of the health-care system. Essential medicines should be considered social goods, not commercial products.

42. In order to tackle school dropout, education should be provided to all children free of charge. Canteens should be set up in primary schools, boarding schools should be opened for secondary school-age children and accommodation should be provided for

university students. Funding for human resources and scientific research should be increased in order to strengthen and improve the education system and its management. There should be more focus on providing education specifically tailored to the needs of members of nomadic populations and their children and the Ministry of Education should draw up and implement a strategy for preventing the radicalization of students in Qur'anic schools. The social value of Malian culture from the point of view of diversity should be formally recognized and Malian heritage better protected from transnational companies seeking to establish patents.

43. **Mr. Windfuhr** said that he would be interested to hear what core issues relating to land management should be brought up during the Committee's dialogue with the Malian delegation. In preparation for the dialogue, more information on the scope of the ongoing process of privatization of the health-care service in Mali and the pace of that process would be useful. He asked whether both rural and urban dwellers had difficulties obtaining housing and whether there were any related issues that the Committee should raise with the Malian delegation.

44. **The Chair**, speaking as a member of the Country Task Force, asked whether it was true that the Malian health-care system was not currently functional.

45. **Ms. Sanou** (Coalition Malienne des Défenseurs des Droits Humains) said that Malian agricultural law accorded 15 per cent of land earmarked for development to women and persons with disabilities. However, such land was located in only three communities and represented only a fraction of the national territory. In rural areas, only village chiefs, neighbourhood leaders and heads of household could own land, thus excluding women. Although women could cultivate their husband's land, they could never be landowners in their own right. Customary law dictated that, when a male landowner died, the land was to be passed on to a male relative. The Committee should press the Government of Mali to rectify that situation.

46. **Mr. Mahamar** (Plateforme des droits économiques, sociaux et culturels du Mali) said that, in an effort to minimize the cost of health care, compulsory health insurance for civil servants and a community-run health insurance scheme for the poor had been introduced. There was a general move towards a universal health insurance scheme that would cover the entire population. However, putting such a scheme into practice continued to pose a challenge. A large number of people chose to be treated at recently opened private clinics and surgeries owing to their closer proximity to the community, despite having to pay. That reality underscored the need to improve access to community health-care centres. It was likewise necessary to find a way to incorporate private health-care facilities into the proposed universal health insurance scheme.

47. The high costs associated with the upkeep of housing could be attributed to the building materials used. That outlay also had a negative impact on social housing tenants, who often ended up paying exorbitant rents. Measures needed to be taken to reduce the cost of the materials in question, such as sourcing them locally.

Germany

48. **Ms. Mahler** (German Institute for Human Rights) said that the signing and ratification of the Optional Protocol to the Covenant by Germany had been delayed again owing to the need to conduct a further review of the necessary legislative amendments.

49. Protection against discrimination, particularly substantive discrimination, was not fully guaranteed in the German education system. Despite some progress, Germany had not succeeded in breaking the link between students' socioeconomic background and long-term educational success, particularly in the case of students from a migrant background. Students with special educational needs were still taught in special schools and often failed to obtain a secondary-school leaving certificate. Moreover, human rights education in schools was generally found to be lacking.

50. While the General Equal Treatment Act offered protection against age-based discrimination in the areas of labour law and civil law, it did permit such discrimination for the purpose of performing actuarial calculations for insurance and the provision of financial

services. Unequal treatment in public law was only covered by the Basic Law and not the General Equal Treatment Act.

51. In Germany, more than half of all persons with disabilities of working age were not integrated into the labour market. In addition, the transition rate from sheltered workshop activities to the general labour market was very low.

52. Following the revision of the Asylum Seekers' Benefit Act in 2015, the benefits available to asylum seekers approximated general social security benefits. However, a regulation had subsequently been introduced which had replaced the "personal needs payment", previously paid as a cash sum, with "benefits in kind". For legal and practical reasons, the majority of children staying in initial reception facilities for refugees and asylum seekers were unable to attend school for extended periods of time. Recently enacted legislation had extended the two-year suspension of the right to family reunification for persons recognized as beneficiaries of subsidiary protection.

53. In Germany, intersex children were still subject to medically unnecessary and deferrable operations and therapies. Those interventions were generally irreversible and could cause severe long-term physical and psychological suffering. The coalition agreement agreed on by the parties in government provided for a statutory ban on non-consensual gender-modifying medical interventions on intersex children. Work on the related bill had already begun.

54. It remained to be seen whether the overhaul of the legal framework for the provision of care would enhance the quality of everyday care. Legal reforms needed to be accompanied by structural change in everyday care to ensure that the human rights of both care recipients and caregivers were better protected.

55. The Committee should urge the Federal Government to expand the scope of the General Equal Treatment Act and broaden the mandate of the Federal Anti-Discrimination Agency to deal with a broader range of complaints.

56. **Ms. Dietrich** (Nationale Armutskonferenz) said that, despite the Committee having called upon the Federal Government to adopt and implement a comprehensive anti-poverty programme in its previous concluding observations (E/C.12/DEU/CO/5), poverty reduction was still largely neglected.

57. The Committee had likewise expressed concern over the large proportion of the population who, despite being economically active, still required income support as their earnings did not sustain them. Regrettably, some 1.1 million employed persons currently earned so little that they were dependent on benefits to subsist. A study by the Institute of Economic and Social Research showed that in-work poverty had doubled between 2004 and 2014. Although the Federal Government maintained that employment placement was the most important means of poverty reduction, statistics showed that the recent decline in unemployment had not led to a reduction in poverty. Job growth in Germany was, to a large extent, the result of an expanding low-wage sector. Women accounted for two thirds of the 7 million workers with a so-called "mini-job", which seldom led to regular employment. The Federal Government should take steps to combat poverty among the employed and to promote decent work, fair wages and the containment of the low-wage sector, in addition to job growth.

58. Any perceived failure to cooperate with employment placement services could lead to the imposition of sanctions, which could result in the reduction or even the denial of benefits. A total of 953,000 sanctions had been imposed in 2017. Persons under 25 years of age were subject to drastic sanctions if they did not accept or left a job or dropped out of an educational programme. Persons subject to sanctions could face existential threats when they entailed cuts to their accommodation allowance, which could lead to eviction and homelessness. Furthermore, a large proportion of the sanctions imposed were actually unlawful, given that 38 per cent of all lawsuits or legal challenges against sanctions were successful. From a human rights perspective, the regulations governing sanctions ran counter to the Covenant as they cut the basic subsistence allowance, forced recipients to accept precarious work and discriminated on the basis of age. Sanctions that threatened minimum subsistence should be abolished without delay.

59. **Ms. Lüst** (Aktion GEN-Klage) said that, contrary to what was stated in the report, the Federal Government had not applied a human rights-based approach to its international trade and agriculture policies or provided information on its policy regarding the protection of health in the context of food containing genetically modified organisms. Genetics companies were developing new strategies and Germany was moving its production abroad, where German laws such as the Genetic Engineering Act did not have to be applied or could be circumvented.

60. The introduction of new, untested genetic varieties could have negative health consequences. More and more untested genetically modified organisms were being imported into the European Union for use in feed and food and contamination from genetically modified organisms was increasing. Furthermore, importing genetically modified soya led to human rights violations in producing countries and destroyed the livelihoods of German farmers. The Bayer-Monsanto merger would likely exacerbate the situation of farmers by further restricting variety selection and diversity and dictating prices.

61. The Federal Government should take steps to protect the interests of farmers and consumers and to safeguard national food sovereignty by setting up a national seed fund for projects to develop reproducible seeds that were free of genetically modified organisms, banning the use of genetic engineering in the production of animal feed and food and in other agricultural activities, reducing its dealings with large companies that outsourced their production and prohibiting the import of genetically modified soya from abroad.

62. **Mr. Litschke** (Forum Menschenrechte), recalling that the Federal Government had already accepted the communication procedures under other United Nations human rights treaties that dealt with economic, social and cultural rights, said that it should ratify the Optional Protocol to the Covenant without any further delay.

63. Despite the Federal Government's efforts, the situation of refugees, asylum seekers and migrants remained a cause for concern. The Committee should urge the Federal Government to ensure that asylum seekers could leave reception centres as soon as possible and were granted unrestricted access to the health insurance system; that the right to family unification was not so severely restricted; and that persons with an irregular residence status, particularly women, were able to report crimes committed against them without triggering immigration enforcement procedures.

64. The Committee might also wish to address problems such as homelessness, evictions and the lack of accessible housing for persons with disabilities and older persons, which were attributable to high rents in cities, a lack of State-funded social housing and inadequate social welfare. It might also consider taking up the issue of the growing resistance to the inclusion of persons with disabilities in the labour market and the education system.

65. **Ms. Leifker** (Forum Menschenrechte) said that the Federal Government's continued reluctance to introduce the binding regulations necessary to prevent and redress violations of Covenant rights committed by German businesses abroad was a serious cause for concern. Germany should follow the example of other European countries by adopting binding human rights due diligence standards. According to the National Action Plan on Business and Human Rights, if less than 50 per cent of all companies with more than 500 employees based in Germany had incorporated the elements of human rights due diligence by 2020, the Federal Government would consider further action, which might include legislative measures. However, it was not enough for only 50 per cent of companies to adopt human rights due diligence standards. Such standards should be adopted across the board, including in public procurement and external trade promotion. Moreover, the human rights risks posed by German business ventures abroad should be subject to rigorous assessment.

66. The Committee might consider recommending that Germany should establish a legal framework that required German businesses to comply with human rights due diligence standards; made compliance with such standards a prerequisite for the conduct of public procurement and external trade promotion activities; and guaranteed that victims of human rights abuses committed by German companies had access to justice.

67. **Mr. Schultz** (Stiftung für soziale Menschenrechte und Partizipation) said that growing right-wing populist forces were intent on discriminating against and marginalizing entire sectors of the German population. The realization of social rights for all was therefore more important than ever. The Committee should urge the Federal Government to sign and ratify the Optional Protocol to the Covenant without further delay or to provide, at the very least, a specific time frame for doing so. The Committee might also recommend the inclusion of social rights in the country's Basic Law and in all other relevant legislation and urge the Federal Government to address the general housing shortage, evictions and violent attacks on homeless people.

68. **Mr. Frey** (Forum Pflege Aktuell) said that, although the Committee had previously expressed concern about the conditions in German nursing homes (E/C.12/DEU/CO/5), there was no indication in the sixth periodic report of Germany that they had improved. At present, there was a shortage of nursing staff, and there were reports that some patients received insufficient food and water or were subject to measures constituting illegal deprivation of liberty or restrictions of their rights. Other patients were reportedly victims of intentional or negligent killing. The Federal Government should not allow such treatment to occur and should fulfil its obligations under the Covenant.

69. **Ms. Schlüchter** (Arbeitskreis Arbeit/Soziales Attac München) said that approximately 30 per cent of children went to school without breakfast and many, especially those from disadvantaged backgrounds, were at risk of malnutrition as lunch was not provided in all schools. The Committee's recommendation for schools to provide meals (E/C.12/DEU/CO/5) had not been implemented and it was left to private initiatives to provide food. In addition, a shortage of childcare meant that poor parents were unable to participate in social life, which contributed to the increasing gap between rich and poor.

70. **Ms. Bader** (Doctors of the World Germany) said that changes to the law on access to social welfare had reduced the right of non-nationals to access social services, which had mainly affected unemployed European Union citizens. Moreover, European Union citizens in formal employment or with the right to reside in Germany had limited health care for their first five years of residence, and had no right to the reimbursement of any health-care costs.

71. Asylum seekers also faced restricted access to health care, both in terms of the duration of care and their entitlements. Undocumented migrants were only entitled to receive care in childbirth or in cases of emergency. However, many undocumented migrants did not use their entitlements for fear of deportation, as treatment providers were legally required to report them to the immigration authorities. The Government should revise existing legislation and abolish the requirement to report undocumented migrants, which had already been repealed in the education sector; remove all restrictions on access to health care for non-nationals living in Germany; implement a monitoring system to ensure that decisions in individual cases did not violate the right to health; and collect and report data on the impact of the current health-care restrictions.

72. **Mr. Mimkes** (Food International Action Network Deutschland) said that, in its extraterritorial obligations, Germany focused on voluntary instruments, which were insufficient to prevent human rights abuses. In its replies to the Committee's list of issues (E/C.12/DEU/Q/6/Add.1), the Government stated that victims of human rights violations caused by German companies abroad could bring cases before civil courts in Germany. However, the cases it cited did not prove that victims really had access to remedies, as they had been supported by German civil society organizations. The Government should establish binding regulatory mechanisms to prevent the violation of human rights by companies engaging in foreign investment or business activities abroad, and Germany should participate in the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights.

73. Although the German constitution, the Basic Law, acknowledged that land governance had a human rights dimension, the number of farms in Germany had fallen by 10 per cent since 2011. The price of farming had risen steeply and it had become difficult to enter into farming as State support was biased towards larger farms. The Government should protect small-scale agriculture; request information about activities undertaken to

ensure equitable access to land; address discrimination against small-scale farming; assess legal loopholes relating to land transactions; and monitor large land transactions to address the concentration of land ownership.

74. **Mr. Kayiira** (Wake Up Madudu Group) said that, in 2001, the inhabitants of the Mubende District in Uganda had been forcibly evicted so that their land could be used by the Kaweri Coffee Plantation, a subsidiary of the Neumann Kaffee Gruppe, based in Hamburg. The victims had filed a case in the High Court of Uganda in 2002, but the case had not yet been concluded. Moreover, although the Committee had recommended that the Government of Uganda restore the victims' land rights (E/C.12/UGA/CO/1), no action had yet been taken. In 2017, his organization had appealed to the German Government to work with the Ugandan Government to implement the Committee's recommendation, but had been told that the situation was a Ugandan internal matter. The Committee should request the German Government to work with its Ugandan counterpart to restore the victims' land rights and pay damages.

75. **Ms. Cerisier** (Women's International League for Peace and Freedom/European Center for Constitutional and Human Rights) said that, despite its legal obligations, Germany continued to sell weapons to countries with dubious human rights records. In September 2018, Germany had approved sales of arms to Saudi Arabia, the United Arab Emirates and Jordan, even though the Federal Government had previously agreed to stop selling arms to countries involved in the Yemeni civil war. Such sales were likely economically motivated, even though the Government had stated that arms sales were not part of its economic policy. The Government should uphold its treaty obligations by immediately stopping sales to countries in the Saudi-led coalition forces in Yemen.

76. **Ms. Geyer** (Women's International League for Peace and Freedom/European Center for Constitutional and Human Rights) said that international organizations of which Germany was a member imposed austerity measures that had contributed to the feminization of poverty and the increase of gender equality. Moreover, in response to a perceived threat from refugees, there had been a rise in the number of small-arms licences granted, which, in turn, could lead to an increase in all forms of violence. The Government should therefore raise awareness of the impact of xenophobic propaganda and monitor the impact of granting small-arms licences.

77. Female refugees and asylum seekers continued to face violence in reception centres, and were often unable to seek protection owing to language barriers and a lack of information. Reception centres should introduce gender-sensitive measures to protect women, including by offering training for staff and awareness-raising activities to inform female refugees and asylum seekers of their rights.

78. **Ms. Trau** (Bundesvereinigung Trans/Jugendnetzwerk Lambda) said that German law recognized gender recognition based on self-determination, which enabled transgender people to change their name and official gender marker. However, the relevant law was outdated and required applicants to obtain two expert opinions and have a meeting with a judge in order to have their gender recognized. As human rights experts and progressive scientists agreed that the individuals concerned were the only people qualified to provide information about their gender identity, the law was a violation of the dignity and right to self-determination of transgender people. Although the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth had drafted a bill that would partially amend the law, it would only cover a small proportion of the people affected. The law should be replaced by gender recognition legislation that guaranteed a quick, transparent and universally accessible process based on self-determination.

79. Children who were gender-diverse, meaning transgender, non-binary or identifying as neither male nor female, were often unable to avoid places where they faced discrimination, including school and home. They were more vulnerable to depression and suicide than their peers, although rates were significantly lower among those in a socially supportive environment. The relevant legislation should therefore be amended to allow minors to access gender recognition procedures without requiring the support of their legal guardians.

80. The German medical system did not address the specific needs of gender-diverse people, and coverage of medical treatment for transgender people was based on landmark court rulings rather than the social security code. Many gender-diverse people, particularly in rural areas, struggled to receive basic medical support owing to their reliance on the decisions of individual health-care professionals and insurance providers. The Committee should recommend the incorporation of transgender-related medical treatments into the social security code and the development of medical treatment for all people with gender-diverse identities.

81. **Ms. Laurence** (Arts Rights Justice Working Group) said that members of her organization working in music, the theatre and academia had been monitoring artistic freedom in Germany. As in other European countries, the main threats to artistic freedom came from third parties, such as commercial entities or political groups. However, the Government had worked to uphold artistic freedom when it had been challenged, and had also supported initiatives to promote and protect artistic freedom, including the Arts Rights Justice Programme at the University of Hildesheim and the Martin Roth-Initiative. The Federal Foreign Office had hosted a debate on artistic freedom and, in October 2018, the Goethe-Institut in Beirut would host a discussion on artistic freedom in the Arab world. Such initiatives should be encouraged.

82. **Mr. De Schutter** (Country Task Force) said that he wished to know whether a case had been brought in the German courts against the Neumann Kaffee Gruppe. He would also appreciate information as to the reasons why sanctions had been imposed on social welfare recipients.

83. **Mr. Sadi** said that he shared the concerns expressed about genetically modified food. The German Government could consider setting an example by amending the right to food to exclude genetically modified food.

84. **Mr. Kayiira** (Wake Up Madudu Group) said that his organization had brought a complaint against Neumann Kaffee Gruppe under the national guidelines of the Organization for Economic Cooperation and Development (OECD). However, while the complaint was being processed, the head of the OECD desk in the Federal Ministry of Finance had been unable to continue her duties, which had been taken over by an official from the Ministry. The complaint had then been prematurely concluded in favour of the company.

85. **Ms. Dietrich** (German Anti-Poverty Network) said that young, unemployed recipients of social welfare were the most likely to be sanctioned. In 2017, the average reduction in welfare entitlements had been 19 per cent, corresponding to an average of over €100 per month, but the average reduction among young people had been over 30 per cent, or approximately €127 per month.

86. **Ms. Mahler** (German Institute for Human Rights) said that social welfare sanctions were largely imposed because recipients did not attend appointments, complete the necessary paperwork or submit all required evidence, or if they changed address without permission.

87. **Ms. Lüst** (Aktion GEN-Klage) said that nationwide labelling obligations in Germany excluded animal feed and animal products, which made it possible for genetically modified products to be imported. The Government had a duty to ensure that all genetically modified foods were labelled.

88. **Ms. Leifker** (Forum Menschenrechte) said that, in the German court system, cases where the human rights of entire communities had been violated by a country's actions abroad must single out four claimants from the affected community. The Government was aware of the problem, but had not yet addressed it in the justice system. It was worth noting that the Committee's general comment No. 24 (2017) on State obligations under the Covenant in the context of business activities had been useful to NGOs working on issues related to business and human rights.

The meeting rose at 6 p.m.

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Sixty-fourth session

Summary record of the 31st meeting
Held at the Palais des Nations, Geneva, on Tuesday, 25 September 2018, at 10 a.m.

Chair: Ms. Bras Gomes

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Sixth periodic report of Germany

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The meeting was called to order at 10 a.m.

Consideration of reports

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant

Sixth periodic report of Germany (E/C.12/DEU/6; E/C.12/DEU/Q/6 and E/C.12/DEU/Q/6/Add.1)

1. *At the invitation of the Chair, the delegation of Germany took places at the Committee table.*

2. **Mr. Boehning** (Germany) said that his Government remained firmly committed to multilateralism and upholding economic, social and cultural rights. Germany acknowledged the importance of defending the achievements of the United Nations and protecting the human rights system in the face of mounting challenges such as globalization, demographic shifts, migration, digital transformation and climate change. In times of increasing populism and nationalism, it remained paramount to strengthen the United Nations system.

3. The Government had taken steps to uphold its obligations under the Covenant both internationally and nationally. At the international level, Germany had supported the mandate of the Special Rapporteur on the human rights to safe drinking water and sanitation and the Human Rights Council resolution on the right to work, and had promoted human rights as a guiding principle in its international development activities. It had also placed great emphasis on implementing the various International Labour Organization standards, including measures to combat violence and harassment in the workplace. At the national level, the Government had continued its efforts to implement the provisions of the Covenant and had made good progress. New approaches had been adopted to address any remaining gaps and build even greater cooperation and consensus between the Government, civil society and social partners.

4. The Government had relaunched the process to consider the ratification of the Optional Protocol. Given the complexity of the issue and the number of stakeholders involved, a positive outcome would require strong political will. The Government would proceed to examine the compatibility of the Optional Protocol with national legislation, including on issues such as the right to strike for civil servants.

5. During the previous constructive dialogue, the Committee had made recommendations relating to the areas of housing, social care and child poverty. The Government had placed those issues high on its political agenda. Steps had been taken to uphold the right to housing, including through a planned amendment to the Basic Law (the constitution) to grant earmarked financial subsidies for the building of additional social housing and the allocation of €2 billion for social housing over the 2020–2021 period. A housing summit had also recently been held to discuss the housing crisis and a cap on rental increases had been introduced to strengthen tenants' rights. Regarding care services, the Government had taken steps to improve the conditions in care institutions, had doubled benefits for home care under the statutory care insurance system and had increased benefits for inpatient care by 40 per cent. It had also launched an emergency programme for nursing and elderly care and drafted a bill to strengthen the number of nursing staff by more than 13,000 posts. While the national social security system offered good levels of protection, additional steps had been taken to combat child poverty. A package of measures had been put together focusing on single parents and large families. The Government was also planning to increase the amount of child benefit and other allowances available to low-income families and to strengthen education and participation benefits for them.

6. **Mr. Dasgupta** (Country Rapporteur), welcoming the State party's efforts to implement the Covenant, said that he would like to know whether the Government intended to ratify the Optional Protocol in the near future. Despite the fact that the State party had steadily increased its official development assistance, the 2015 data provided in the report showed that the country had fallen short of the target of 0.7 per cent of gross national income (GNI). The Committee would therefore be grateful for further information on the amount of official development assistance provided during the 2016–2018 period. It would

also welcome the delegation's comments on reports that the Basic Law failed to enshrine all the rights set forth in the Covenant.

7. Noting the lack of relevant information in the report, he wished to know how effective national legislation had been in preventing churches from discriminating against adherents of other faiths when making non-ecclesiastical appointments in church-run institutions such as schools, hospitals and nursing homes. Further clarification as to whether such legislation prohibited churches from dismissing non-ecclesiastical employees in same-sex marriages would be welcome. He would also appreciate further clarification of paragraph 30 of the State party's replies to the list of issues, as contained in E/C.12/DEU/Q/6/Add.1, in which it had been stated that anti-discrimination legislation permitted differing treatment of individuals on grounds of religion or beliefs under certain conditions, which constituted a violation of the State party's obligations under the Covenant.

8. In view of the State party's reported difficulties in reducing greenhouse gas emissions by at least 40 per cent by 2020, he wished to know what measures would be adopted to ensure that Germany would meet its 2030 target of reducing emissions by at least 55 per cent, and whether the State party intended to transform its national target into an international commitment under the Paris Agreement. He would also be grateful for detailed information on the State party's position regarding the assessment and monitoring of the impacts of the European Union Common Agricultural Policy on low-income food deficit countries prior to the upcoming negotiations concerning the reform of the policy. Further clarification of Germany's position regarding the inclusion of data exclusivity provisions in the European Union Preferential Trade Agreements with developing countries and the impact of such provisions in delaying access to inexpensive generic medicines in poorer countries, with adverse impacts on the right to health, would also be welcome.

The meeting was suspended at 10.30 a.m. and resumed at 10.40 a.m.

9. **Mr. Boehning** (Germany) said that the Government had relaunched the process of considering the ratification of the Optional Protocol at the start of the current legislative term. Given the number of stakeholders involved, the complexity of the task and the far-reaching implications, the process had not yet been completed and would take some time. The Government hoped to formulate a position on the issue soon. The official development assistance target of 0.7 per cent of GNI had been reached for the first time in 2016. Despite the Government subsequently increasing its contributions, that target had unfortunately not been met over the 2017–2018 period. The Government would consider the issue closely when devising the 2019 national budget. The Basic Law enshrined all the rights set forth in the Covenant and there were no plans to amend it at the current time.

10. Concerning the application of anti-discrimination laws, churches did not have complete leeway in their actions but, like other organizations, were bound by the Basic Law and were required to adhere to human rights principles. The case law of the Federal Constitutional Court established that a balance must be found between human rights on the one hand and churches' right to self-determination on the other. The question of whether churches could require employees to conform to their religious ethos had been contested before the European Court of Justice, notably in the *Egenberger* and the *IR v. JQ* cases, which had resulted in churches' right to self-determination being restricted. In the *Egenberger* case, the European Court of Justice had ruled that the requirement of religious affiliation for employment within a church must be amenable to effective judicial review; similarly, in the *IR v. JQ* case, it had ruled that churches could not decide to require their employees to act with loyalty to their ethos without that decision being subject to effective judicial review. Under the General Act on Equal Treatment, the German courts must now review those cases; it would be up to the Federal Labour Court to consider and implement the decisions of the European Court of Justice. The courts had not yet heard any cases concerning the dismissal of an employee on the grounds of having entered into a same-sex marriage.

11. In respect of the commitments undertaken under the Kyoto Protocol to the United Nations Framework Convention on Climate Change, it was true that Germany would probably not meet its 2020 target. However, the Government remained committed to its

2030 target of reducing greenhouse gas emissions by at least 55 per cent compared with 1990 levels. Germany had pledged €750 million to the Green Climate Fund, of which €55 million had already been allocated. Moreover, a commission on growth, structural change and employment had been established, which sought to involve stakeholders in finding solutions for the phasing out of lignite production and securing investment so as to boost employment in affected regions.

12. Regarding the European Union Common Agricultural Policy, Germany supported increased market orientation and was the only member State that had chosen not to make "coupled payments" linked to production.

13. **Mr. Dietz** (Germany) said that in the European Union supplementary protection certificates extended patent protection for medicinal products. The European Commission had proposed the introduction of a waiver to those certificates, whereby European Union-based companies would be entitled to manufacture a generic or biosimilar version of a protected medicine during the term of the certificate, if done exclusively for the purpose of exporting to a non-European Union market where protection had expired or never existed. Germany adopted a balanced approach in that area, seeking to take account of the legitimate interests of both manufacturers and patients, and the Government was currently developing its position on the proposal.

14. **Mr. Sadi** said that he was pleased the Government intended to ratify the Optional Protocol, which he regarded as a litmus test that showed when States parties were serious about meeting their Covenant obligations. He wondered whether the Government was concerned about the financial implications of ratifying the Optional Protocol, which he believed were less than those entailed by implementation of the Covenant. Lastly, he asked how successful German society had been in integrating recent immigrants and whether there was any sign of a backlash against the newcomers.

15. **Mr. De Schutter** (Country Task Force), drawing attention to the Committee's general comment No. 24 on State obligations under the Covenant in the context of business activities, asked whether it would be deemed unacceptable if a significant number of large companies decided to ignore the National Action Plan on Business and Human Rights by not applying human rights due diligence in their supply chains and in the multinational groups that they controlled. Did the voluntary approach to due diligence risk distorting competition between companies operating in the same sector? And was that approach consistent with the expectation that all companies should cooperate with the National Contact Point for the OECD Guidelines for Multinational Enterprises?

16. The Committee was concerned that some countries were not adequately assessing the risk that arms exports posed in terms of their impact on economic, social and cultural rights. Recalling that Germany had ratified the Arms Trade Treaty, under which risk assessments must be conducted prior to the granting of export licences, he welcomed the Government's decision to suspend future arms sales to parties to the conflict in Yemen and asked what lessons had been learned from the mistakes of the past. How did the Government plan to improve risk assessment, and would it take into account the risk that receiving Governments might divert resources from much-needed social investment in order to buy weapons?

17. **Mr. Uprimny** said that, although Germany had made a number of improvements to recognize and guarantee the rights of transsexual persons, he was concerned that the relevant legal framework dated from the 1980s and included outdated terms such as "gender identity disorder", which led to the unnecessary pathologization of transgender people. Therefore, he was interested to know whether Germany intended to bring its legal framework into line with contemporary human rights standards.

18. Furthermore, observing that the State party wielded significant influence in international institutions such as the European Union and the International Monetary Fund and had played a role in the imposition of austerity measures on countries such as Greece, he asked how the Government viewed its responsibility to guarantee economic, social and cultural rights in other countries.

19. **Mr. Abdel-Moneim**, drawing attention to paragraph 25 of the State party's replies to the list of issues, which contained a table of figures on public expenditure on areas such as education, health and housing between 2007 and 2016, said that he would welcome the delegation's opinion as to whether public expenditure in those areas had increased sufficiently during that period, in view of the relative strength of the German economy. The Committee would be grateful for an explanation of how the Government defined the "maximum of available resources", as referred to in article 2 of the Covenant.

20. **The Chair** said that the Act on the Equal Participation of Women and Men in Executive Positions in the Private Sector and Public Service of 2015 applied only to listed companies; she was interested to know what steps might be taken to ensure that women were represented on the boards of non-listed companies. Considering that the tax system and the system of non-contributory insurance for married partners with low incomes were disincentives for married women to participate in employment, she asked how the Government planned to combat the perpetuation of gender roles and stereotyping, including the portrayal of women in the media.

21. **Mr. Dasgupta** said that, while he understood that Germany had committed itself to the climate change target of reducing greenhouse gas emissions by 55 per cent by 2030, he would like to know whether that commitment was also an international obligation that had been communicated as a nationally determined contribution under the Paris Agreement. Moreover, he would be grateful for clarification of Germany's position regarding his concern that the European Union compelled developing countries to accept data exclusivity provisions in the framework of preferential trade agreements, with the consequence that generic drugs had to undergo tests that had already been carried out on the identical patented drug, delaying their introduction and increasing their cost, with negative impacts on poorer countries.

22. **Mr. Chen** said that he was interested to know more about the equal rights and entitlements of the State party's nationals, considering that some decades had elapsed since German reunification and that wide economic gaps had initially existed between citizens of the former western and eastern parts of the country. Information might be provided about inequalities or unequal treatment that persisted as a result of that situation, including those caused by policies, mentalities or culture.

The meeting was suspended at 11.15 a.m. and resumed at 11.25 a.m.

23. **Mr. Boehning** (Germany) said that ratification of the Optional Protocol was an important measure that represented a step forward for the country. As it was a stated aim in the current Government's coalition agreement, he was confident that consensus would soon be reached and a solution found. Financial implications were not an obstacle to ratification.

24. It was too early to state whether efforts to integrate refugees had been a success or a failure. The Government had responded to the disruptive inflow of refugees that had occurred in 2015 and subsequent years by engaging in continuous consultations with the federal states and municipalities and had realized that, in addition to housing the refugees in a dignified way and meeting their health needs, efforts were required to support the integration of those who were likely to stay, either because they were unable return to their country of origin or because they were entitled to asylum. Measures that had been adopted included the teaching of the German language and awareness-raising about German institutions and administrative processes. All refugees who were required to attend school were able to access the education system. Moreover, recognizing that refugees had different backgrounds and qualification levels, the Government had adopted a joint integration strategy with modules for different target groups on aspects such as language learning, vocational training, education and social integration. It had also adopted the "3+2 rule", whereby refugees who were likely to stay in the country could take a three-year vocational training course and would be entitled to work for two years after its completion, thus providing them with a solid vocational foundation that would allow them to contribute to the reconstruction of their country of origin, should they return. Given that integration usually took many years, it was not yet possible to draw final conclusions, but the Government would continue to provide access to education and the labour market and to strive to ensure social inclusion at the local level.

25. According to the National Action Plan on Business and Human Rights, by 2020 at least half of German companies with more than 500 employees must have arrangements for meeting their corporate due diligence obligations effectively in place as part of their business processes. According to the current Government's coalition agreement, a failure to reach that goal would trigger further action by the Government, including the adoption of legislation. Similar legislation had already been adopted in other countries, including France. The Government was raising awareness in the corporate world and was providing companies with tools to implement human rights due diligence on a voluntary basis.

26. **Ms. Baun** (Germany) said that it was expected under the National Action Plan that all companies should demonstrate corporate due diligence. The commitment was voluntary for the time being, but a failure to meet the established goals would likely result in legal obligations being imposed. The Government was mindful of the need to work with its partners within the European Union and throughout the world to ensure that comparable rules were applicable everywhere. Germany had thus raised the question of corporate due diligence during its recent presidencies of the G7 and G20 meetings, for instance. An interministerial committee ensured contact with all stakeholders, and a stakeholders' forum issued recommendations for implementation of corporate due diligence in the country.

27. **Mr. Boehning** (Germany) said that the Government's contacts with businesses was a source of pride and that German consumers were very aware and mindful of human rights issues in supply chains.

28. The Government only authorized arms exports if it could ascertain the final destination, and in case of doubt it rejected the export application. In 2018, 89 such applications had been rejected, representing some €14.2 billion. The Government had since May 2017 monitored deliveries of arms after their shipment to ensure that they were not diverted. With Switzerland, Germany was one of the few States that carried out such post-shipment inspections.

29. The Government considered that it was important to protect and encourage diversity within society. The Federal Constitutional Court had ruled in 2017 that the State should accept a third gender, and in August 2018 the Cabinet had approved draft legislation that would pave the way for implementation of the decision. Another draft law was aimed at changing the rules applicable to transgender persons.

30. **Mr. Kamperhoff** (Germany) said that the legal framework for family affairs dated back to the 1980s and was not always in line with the situation and language currently in use in German society. For instance, same-sex marriage had been recognized in Germany only one year earlier. The Government was in the process of amending the law to allow for a third option when people declared their gender, and it was already possible for the parents of newborns to abstain from declaring their children's gender, for instance in cases where the sex of the child was unclear. A draft law currently under consideration would, if adopted, establish that it was not necessary to assign a sex to transsexual person. The Government was adapting the law to current realities and understood the need for further reforms to bring it into line with social change.

31. **Mr. Boehning** (Germany) said that the European Stability Mechanism required that the European Commission should coordinate with the European Central Bank and the International Monetary Fund. The three parties had to agree on a memorandum of understanding, which set out financial assistance policies that were subject to certain conditionalities. The countries receiving assistance as part of the European Stability Mechanism had ratified the European Social Charter and were thus obliged to comply with its provisions. In Germany, there was a lively debate about the impact of financial assistance and the corresponding conditionalities, especially in respect of assistance provided to Greece.

32. Resources for education and housing were limited, as a balance must be struck between the requirements of various government ministries and between different political interests. The federal Government had to have a balanced budget, but it acknowledged the need to invest more in housing, and there was a consensus among the federal states and the Government that education also required increased support. As a result, it had been agreed that the federal states, which were nominally the ones responsible for education budgets,

would receive additional federal financial support for education programmes. Funding for education and housing would thus increase in the future. At the federal level the budget was balanced, so the maximum available resources for education were defined as a function of revenues and investment possibilities, but at the local level budget surpluses were often earmarked to improve education programmes. A massive expansion of childcare services and infrastructure was currently under way, funded in part from such surpluses.

33. **Mr. Kamperhoff** (Germany) said that a law that had entered into force in 2016 called for at least 30 per cent of the board members of companies to be of the underrepresented sex among the board membership. Failure to comply with the rule meant that empty places could not legally be filled, which could have serious repercussions, as the regulations of many companies required a quorum of board members to be present to adopt decisions.

34. **Mr. Boehning** (Germany) said that the Government was aware that the principle of equal pay for equal work was not applied universally and that an anti-discrimination law and an anti-discrimination office were needed at the federal level. The tax law had recently been adapted to make it easier to implement fairer taxation brackets that could eliminate the disadvantages of joint taxation of couples. The depiction of women in the media was the subject of study by media institutes at the federal state level. Such institutes were able to undertake proceedings to force radio and television stations to abstain from broadcasting content that sexualized women or perpetuated gender stereotypes. The country's targets for the prevention of climate change were determined by European Union regulations, which assigned contributions to each member State. The Government was committed to the aims of the Paris Agreement on climate change and was opposed to amending it. The Common Agricultural Policy was the subject of an internal discussion within the European Union, and the Government thus had no intention of taking unilateral action.

35. **Mr. Dietz** (Germany) said that the European Medicines Agency, a European Union body, was responsible for authorizing drugs for use by the population. The agency considered authorization from a purely scientific viewpoint, evaluating possible benefits and risks for European patients.

36. **Mr. Boehning** (Germany) said that Germany had been reunified for longer than the Berlin Wall had stood. Reunification had been a long process, and a progress report on reunification was due for presentation at the German parliament the following day. The report would comprehensively set out the details of the process and developments since reunification. The federal Government did not consider that reunification was complete. It continued to support the eastern federal states with specific programmes to improve skills and build and renovate infrastructure. Many of the tools initially designed to support the eastern states had in recent times also benefited underdeveloped areas in the western part of the country. Some parts of the east, including areas near Leipzig and Dresden, had developed rapidly and prospered, and they no longer required such assistance. While the infrastructure had been modernized and updated, there was still a need to invest in the new states, especially to ensure proper health care in rural areas. In November 2018 the federal cabinet would be discussing an initiative to support knowledge transfer, skilled labour and digital transformation to benefit small and medium-sized enterprises in the east, where large corporations were less well represented.

37. **Mr. Kedzia** (Country Task Force) said that the Committee had heard that there was a gap of some 1.2 million skilled workers in Germany, and that the Government was considering easing its immigration laws in order to accommodate an influx of skilled workers. It would be of interest to the Committee to hear whether the Government intended to conduct a human rights impact assessment of such a measure and whether it had plans to monitor its effect once it was under way. What steps were planned to ensure that foreign workers who arrived in Germany would benefit from social protection measures to ensure a decent standard of living while they were looking for employment? According to the data presented in an annex to the State party report, the employment situation of persons with disabilities had improved significantly. Was the trend continuing? The delegation was invited to elaborate on the fact that, notwithstanding such progress, a large proportion of companies that were required to hire persons with disabilities had failed to do so, and to explain why the labour force participation rate for women with disabilities was much lower

than those for other women and for men with disabilities. According to the report, many workers with disabilities were still employed in sheltered workshops. Were they covered by labour protection laws such as the minimum wage? A law adopted in 2017 on temporary agency workers, of whom there were currently over 1 million, allowed enterprises, in certain circumstances such as employment of under nine months' duration, to deviate from the practice of equal pay for equal work. The Committee had learned that somewhere between one half and three quarters of temporary agency workers held contracts of under nine months. A number of measures taken to ensure the competitiveness of the German economy or to combat unemployment thus came with high social costs. The encouragement of part-time employment, especially among women, had led to a gender gap in pensions and increased vulnerability to poverty among older women, while the increasing use of fixed-term instead of permanent contracts had led to a situation where workers had the same or similar obligations, but with reduced benefits. He would appreciate more information on the situation with regard to precarious employment in the State party. He would also be interested to hear about the progress the State party had made towards its target of reducing the gender pay gap to 10 per cent by 2020 and whether that target was likely to be reached.

38. He wished to know whether trade unionization was falling in the State party. It would be useful to learn about the forms of organized protest available to civil servants, given that they were banned from striking. He would welcome the delegation's comments on the designation of teachers as public servants, since not all teachers were categorized as providing essential services.

39. Despite the statutory prohibition on infringement of articles 6 and 7 of the Covenant, it appeared that in practice almost any job was considered to be acceptable employment for persons in receipt of unemployment benefits. Data received by the Committee showed that 40 per cent of all lawsuits challenging sanctions imposed on unemployment benefits were successful. The Committee had been informed that in 2016 the Social Court in Gotha had found sanctions to be unconstitutional and had referred the matter to the Federal Constitutional Court; an update on that case would be welcome.

40. Noting that the minimum subsistence level was calculated based on the expenditure of the lowest income group, he asked how the authorities assessed the impact of that calculation method on the effectiveness of social benefits from the perspective of the Covenant right to an adequate standard of living.

The meeting was suspended at 12.20 p.m. and resumed at 12.30 p.m.

41. **Mr. Boehning** (Germany) said that under Book II of the Social Code, basic income support was available to jobseekers who were citizens of other European Union member States on the same basis as German citizens. Freedom of movement granted such persons far-reaching rights, including a three-month exemption from formalities. Beyond that time frame, if they were not in employment they could be excluded from receiving financial benefits under certain conditions. They did not, however, lose their entitlement to emergency medical treatment. Social projects and support schemes were in place at the municipal level for migrants from within the European Union.

42. In 2016, the employment rate for persons with serious disabilities had stood at 4.7 per cent; the statutory target was 5 per cent. Companies not complying with the target were obliged to pay a compensation levy that was used to fund services for persons with serious disabilities. The new Federal Participation Act contained a large number of reintegration measures aimed at such persons, and long-term wage subsidies had been put in place for companies employing them. The authorities were engaged in awareness-raising activities in the business sector and operated a number of initiatives to support persons with severe disabilities who were employed outside sheltered workshops. The Act had strengthened the role of works councils within workshops and also made provision for the doubling of the work support allowance. Under the Act, income was no longer fully deducted from social security benefits.

43. One of the main aims of the Act Amending the Act on Temporary Agency Work and Other Acts, which had been passed in April 2017, had been to reduce competition between regular staff and temporary agency workers within companies. Temporary workers

were now entitled to equal pay after 9 months of employment, and the maximum assignment period had been capped at 18 months.

44. The basic income support package made it possible for earnings below the living wage to be topped up with in-work benefits. Draft legislation that would allow people to earn up to €1,300 without paying full social security contributions was being discussed in the Bundestag (national parliament). The minimum wage, which had been introduced in 2015, was being evaluated by an independent commission. In the coming years, the relationship between low-wage employment and social protection would be examined; it was important to ensure that being in work was financially worthwhile.

45. Another area of concern was self-employment. More than 2 million Germans were self-employed and were not protected by the social security system, particularly in the areas of welfare payments and old-age pensions. Individuals who were self-employed were currently obliged to enrol in either the statutory pension scheme or a private scheme. In the case of platform work, it was not always clear whether workers were employees or self-employed persons. Discussions would take place about how to tackle bogus self-employment via platforms and appropriate measures would be taken to combat it.

46. Under the coalition agreement, the number of fixed-term contracts would be drastically reduced, with companies permitted to employ only 2.5 per cent of their workforce on such terms. Regulations on repeated fixed-term or "chain" contracts would also be introduced.

47. With regard to the gender pay gap, while the Government did not wish to move towards a tax-funded pension system, it did want to increase the employment rate among women from its current level of 77 per cent. An initiative had been introduced to enable employees to reduce the number of hours they worked during "family breaks" of between 1 and 5 years while retaining the right to return to full-time hours at the end of the break. The Cabinet had recently adopted a major pension package, which would ensure that the pension level was kept above 48 per cent and the contribution rate below 20 per cent until 2025. Women who had had children before 1992 were awarded an additional 2.5 years of pension rights in a bid to close the pension gap.

48. The major industrial and service sector trade unions were attempting to address the decline in membership. The proportion of employees covered by collective bargaining agreements had dropped to 57 per cent in western Germany and 44 per cent in eastern Germany. The Federal Ministry of Labour and Social Affairs and the Federal Ministry for Economic Affairs and Energy were working together to explore the possibility of a binding sector-wide collective bargaining agreement for long-term care workers.

49. While civil servants were prohibited from striking, their right to lifelong service was enforceable in court. The Government consulted the civil service trade unions before adopting legislation that would affect the sector.

50. With regard to acceptable employment, under Book III of the Social Code, members of the unemployment insurance scheme who were drawing unemployment benefits were not obliged to accept a job with a salary considerably lower than the one upon which the level of their benefits had been calculated. Persons receiving unemployment benefits were given support in finding new employment. The assertion that sanctions violated human rights was incorrect; the Government maintained a "rights and responsibilities" approach, meaning that anybody in receipt of financial assistance had a responsibility to make efforts to find employment. It was compulsory for beneficiaries to attend job centre appointments and make a contribution to their own reintegration into the labour market. A commission had been established to initiate social dialogue on the sanctions imposed on persons under the age of 25 years, which were stricter than those for other age groups.

51. The level of basic income support was recalculated every five years, based on a combination of data sources, and had been upheld by the Federal Constitutional Court. It was important to ensure that people earned more through employment than through unemployment benefits.

52. **Mr. De Schutter**, referring to the provisions of the International Labour Organization Employment Promotion and Protection against Unemployment Convention,

1988 (No. 168), asked how acceptable employment was defined. Was an unemployed person who was offered a job compelled to accept it notwithstanding the impact on his or her family members?

53. **Mr. Sadi** said that the delegation should provide a brief description of German cultural values, which he presumed migrant workers would be expected to accept and understand.

54. **Mr. Abdel-Moneim** said that he would appreciate clarification of whether the figures provided in paragraph 25 of the State party's replies to the list of issues represented total expenditure as a proportion of the budget or of the gross domestic product. Social security was not among the categories listed in that paragraph; it would be interesting to know where that area fitted into the picture. It would be helpful to learn what proportion of informal employment was illegal and vice versa.

The meeting rose at 1 p.m.

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Committee on Economic, Social and Cultural Rights

Sixty-fourth session

Summary record of the 32nd meeting

Held at the Palais des Nations, Geneva, on Tuesday, 25 September 2018, at 3 p.m.

Chair: Ms. Bras Gomes

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The meeting was called to order at 3 p.m.

Consideration of reports

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (*continued*)

Sixth periodic report of Germany (*continued*) (E/C.12/DEU/6; E/C.12/DEU/Q/6 and E/C.12/DEU/Q/6/Add.1)

1. *At the invitation of the Chair, the delegation of Germany took places at the Committee table.*

2. **Mr. De Schutter** (Country Task Force) said that information would be welcome concerning the state of discussions on the bill related to family reunification for persons entitled to subsidiary protection and on the criteria for the selection of beneficiaries of that measure. He asked to what extent potential beneficiaries would have to provide proof of means of subsistence and adequate housing. It would be interesting to hear whether the new reunification system had been assessed in terms of its compatibility with the international obligations of Germany.

3. He welcomed the 2012 Federal Constitutional Court ruling reducing from 48 months to 15 months the period during which asylum seekers received lower benefit payments than other beneficiaries. However, asylum seekers received marginally lower benefit payments than other foreign nationals during those 15 months. He asked how the 2012 ruling had been interpreted, given that no justification had been provided for such differential treatment. It would be interesting to hear why the State party had introduced a system whereby asylum seekers in reception centres received benefits in kind, rather than in cash. Information would be welcome on any benefits provided to individuals awaiting deportation and on the assessment of the situation of persons accused of remaining in Germany simply to obtain welfare benefits. He asked whether parents had access to adequate and accurate information concerning child benefits and the education and participation package. Information would also be welcome on the take-up rate of such benefits and on the unwillingness of some parents to apply for them.

4. Moves to make the right to housing a joint priority for the federal Government, the federal states and the municipalities and to amend the Basic Law to strengthen the ability of the federal states to provide better social housing were welcome, as was the political agreement recently reached concerning greater protection for tenants against rent increases. However, he wished to know why government spending on housing had been sharply cut back in recent years, in particular given the alarming rise in the number of homeless persons. It would be interested to hear how the State party could reconcile such reductions with its duty to implement Covenant rights and how the various levels of government planned to jointly tackle that urgent situation.

5. He would appreciate information on the measures that would be taken to ensure that all schoolchildren had access to healthy meals, including breakfast.

6. He asked whether the State party intended to exempt health-care staff from the duty to report irregular migrants seeking medical assistance to the authorities, in line with the recommendation of the Special Rapporteur on the human rights of migrants concerning the need for firewalls between public services and immigration enforcement bodies.

The meeting was suspended at 3.15 p.m. and resumed at 3.20 p.m.

7. **Mr. Boehning** (Germany) said that 77 per cent of the sanctions taken against persons receiving unemployment benefit under Book II of the Social Code had been imposed because the individual concerned had repeatedly failed to attend a job centre appointment to discuss skills development, training or potential employment. There was no evidence that persons had been forced to move involuntarily elsewhere in Germany to take up employment. Only 0.25 per cent of all beneficiaries of unemployment benefit had been sanctioned for turning down acceptable employment. German cultural values were set out in the Basic Law, which contained legally enforceable universal rights enjoyed by all, including migrants.

8. In Germany, there was undeclared employment, rather than informal employment. There were no statistics available regarding that phenomenon. The customs authorities were responsible for identifying and combating undeclared employment; they had recently received more human resources to do so and might possibly have their funding increased in that regard in the near future.

9. Information on family reunification for close relatives of persons entitled to subsidiary protection could be found in paragraph 90 of the State party's replies to the list of issues (E/C.12/DEU/Q/6/Add.1). Under sections 22–23 of the Residence Act, foreign nationals had the right to move to Germany as the result of an emergency or for humanitarian reasons. With the influx of over 100,000 foreign nationals in 2015 and 2016, there had been a major public debate over family reunification. As a result of that debate, and given the limited capacity of German embassies in the countries of origin of potential beneficiaries of family reunification, it had been deemed appropriate to set a limit of 1,000 persons per month for entry under the family reunification scheme. Selection for participation in the scheme was based on a number of criteria, in particular the well-being of any children concerned and applicants' potential for integration.

10. **Ms. Bender** (Germany) said that implementation of the law allowing family reunification for close relatives of persons entitled to subsidiary protection had been suspended as a result of the influx of asylum seekers in 2015 and 2016. Under the obligations arising from the accession by Germany to various international agreements, as well as under European Union and domestic regulations, family reunification was not a derived right but rather a matter of family protection that was considered on a case-by-case basis. However, provisions existed for the authorization of reunification to be extended in certain circumstances. The relevant domestic draft legislation was in line with human rights concerns, which were the subject of continual discussions between the various government ministries. Although there were regulations in place governing the provision, by potential beneficiaries of reunification, of proof of means of subsistence and adequate housing, exceptions could be made. The application procedure was being streamlined through cooperation with the International Organization for Migration, which assisted applicants in gathering the necessary documents.

11. **Mr. Boehning** (Germany) said that no conclusions could be drawn regarding the feasibility of allowing 1,000 persons into Germany per month under the family reunification scheme. The action to be taken should the number of applicants exceed that figure could not be decided on until the various German embassies had reported back to Berlin in that regard.

12. Under the Asylum-Seekers Benefit Act, asylum seekers had the right to be housed in a reception centre and to benefits in kind, such as food, heating, household appliances and medical assistance in cases of childbirth or emergency. The federal Government applied the 2012 Federal Constitutional Court ruling on benefits for asylum seekers to the letter. The federal states and the municipalities were responsible for deciding whether benefits were paid in cash or in kind. That decision also depended on whether the individual in question lived in a private home or a reception centre. The basic benefits paid to asylum seekers were around 15 per cent lower than those paid to a German citizen, and 11–18 per cent lower in the case of children. Benefits were calculated based on the needs of the beneficiary.

13. **Ms. Bender** (Germany) said that persons facing deportation were covered by the same regulations as asylum seekers and received the benefits and services they required during their stay in Germany.

14. **Mr. Boehning** (Germany) said that, under the Asylum-Seekers Benefit Act, foreign nationals without refugee status also had the right to access medical services. Under existing regulations governing medical confidentiality, doctors must not report irregular migrants seeking medical assistance to the authorities.

15. In addition to child benefits and the education and participation package, supplementary child benefits were also available. Only children who were entitled to basic income support could benefit from the education package; it provided for services that were not necessarily taken up by certain children, such as sports activities. The federal states

were responsible for delivering the package, and knowledge of its existence was widespread.

16. **Ms. Paschmanns** (Germany) said that, currently, around 600,000 children benefited from the education and participation package. However, the number of applications for the package fluctuated greatly, rising steeply whenever the school term was about to begin and parents wished to purchase educational materials.

17. **Mr. Kamperhoff** (Germany) said that, although all parents were automatically entitled to receive child benefit following the birth of a child, some might not apply for it, perhaps because one parent was resident in another country and had applied for benefits there, or because the parents considered that they were sufficiently wealthy not to require such benefits. Only low-income families could apply for supplementary child benefits. Such benefits were granted subject to the fulfilment of certain preconditions. There were plans to review the corresponding legislation with the aims of removing bureaucratic obstacles and increasing the uptake of those benefits.

18. **Mr. Boehning** (Germany) said that many public housing corporations had been privatized, reducing the number of social housing units available to persons with a low income, and that many municipal authorities had complained that it was impossible to reverse that situation. However, in Berlin, around 300,000 housing units remained in public ownership. Although the Federal Government had provided municipalities with significant funding for the building of large numbers of new homes, the process would take years because there was a shortage of construction workers and building regulations were overly complicated.

19. Although Germany did not keep official statistics on homeless persons, the federal working group on homelessness estimated that, in 2016, there were some 850,000 homeless people. However, that number varied depending on how homelessness was defined. It was likely that a significant number of persons who were considered to be homeless on account of not owning or renting a property in fact lodged with friends. It was estimated that around half of all homeless persons were in fact refugees who, after having left a reception centre, had not managed to find housing owing to the current housing shortage.

20. **Mr. Kloeppel** (Germany) said that, in the early 2000s, the population of German cities had been expected to decrease, so more efforts had been devoted to refurbishing and improving existing properties rather than to building new ones. The transfer of responsibility for the construction of housing from the federal Government to the different federal states had resulted in a decrease in federal spending on housing. Expenditure on housing and the costs of housing benefits in the different federal states were not reflected in the statistics available. In fact, the influx of rural dwellers and European Union citizens into German cities during that period had caused the urban population to swell, necessitating the construction of more housing. The federal Government had introduced subsidies to encourage investment in property development. While that subsidy scheme was proving effective, it would take time to bear fruit. The scarcity of land on which to construct new housing in large German cities was also a challenge. Rental regulations needed to be adjusted in the light of the current housing shortage. Efforts were under way at all levels to align supply with demand.

21. **Mr. Boehning** (Germany) said that many municipalities took social criteria into consideration when allocating land and often gave priority to social housing cooperatives. Across the country, government-owned land was being earmarked for the construction of social housing. Legislation enacted in 2015 had served to cap rent increases in competitive urban housing markets at the local comparative rent plus 10 per cent for new tenants. There were a number of exceptions, including for newly built housing. Landlords were legally required to disclose the rent paid by the previous tenants of a given property. The legislation in question had been further amended and the impact of the cap would be evaluated at the end of 2018. In the future, there would be fewer exceptions to the cap on rent increases and it would be easier for tenants to have the cap enforced by the courts.

22. In order to combat child poverty, the Federal Government intended to increase investment in childcare to enable both parents to work and to improve family benefits. Some €5.5 billion had been earmarked for improving childcare facilities. The child benefit

scheme would also be revised so as to better address the needs of children from single-parent families. The Fund for European Aid to the Most Deprived had been supporting families and, in particular, the children of new European Union migrants since 2016.

23. Child malnutrition was no longer a serious problem. A number of initiatives were being taken at the municipal level to improve the quality of school meals, meals in childcare centres and children's diets in general. Tenders for the provision of school meals were regulated by law, and there had been a marked improvement in the quality of school meals prepared by catering companies. Nutrition was part of the curriculum in German schools.

24. **Ms. Wittenberg** (Germany) said that children from low-income families who were enrolled in all-day schools or all-day childcare facilities were provided with a subsidized meal. The majority of schools now offered an all-day programme. Primary schoolchildren were often provided with breakfast upon arrival in case they had not eaten at home. The prevalence of unhealthy eating habits was a more pressing concern than malnutrition. School nutrition networks were operational in all federal states.

25. **Mr. Boehning** (Germany) said that, although schools had a responsibility to provide children with nutritious meals, overall responsibility for children's nutritional well-being lay with their parents.

26. **The Chair** said that, while it was true that the State could not take on parental responsibilities, the federal Government should not lose sight of the fact that some families were in need of additional support to feed their children. The State party had a responsibility to create an enabling environment for the fulfilment of parental obligations.

27. **Ms. Liebenberg** said it was her understanding that, while victims of economic, social and cultural rights violations committed by German companies abroad could bring a claim for damages before the German courts, a number of practical obstacles impeded their effective access to justice. Those obstacles included the costs associated with bringing such a claim, the impossibility of bringing a collective action, both of which made it more difficult for impoverished victims abroad to seek compensation, and the impossibility of applying German criminal law. She asked whether the State party had taken any steps towards removing those obstacles and improving access to justice for that category of victim, bearing in mind the Committee's general comment No. 24 on State obligations under the Covenant in the context of business activities.

28. **Mr. De Schutter** said that, according to annex 7 to the State party's written replies to the list of issues, the Minimum Wage Commission had found that around 1 million employment relationships had a gross hourly wage below the minimum wage of €8.50 introduced in January 2015 under the Minimum Wage Act. It would be useful to learn more about the legal loopholes that allowed employers to pay less than that amount.

29. **The Chair** asked whether there was a specific definition of a domestic worker in German law and, if not, how the State party guaranteed the labour rights, including the right to form and join trade unions, and the working conditions of domestic workers. Given that the majority of domestic workers were migrant women from non-European Union countries, it would be helpful to know whether the State party had concluded any bilateral agreements with their countries of origin. She would also like to receive information on the steps taken to improve labour inspections in the agricultural sector after the International Labour Organization had found them to be inadequate and, in some cases, the cause of fatal occupational accidents in 2015.

30. **Mr. Kedzia** asked whether the State party had assessed or planned to assess the human rights impact of its strategy to remedy the shortage of skilled labour in the German labour market, which would lead to an influx of some 1.2 million people into the national territory.

31. While he understood the need for a social benefit scheme to include sanctions to ensure the accountability of recipients, he found the number of sanctions imposed on recipients of social benefits in Germany to be very high. The delegation might comment on the veracity of reports that almost 40 per cent of lawsuits filed against sanctions were successful and that the Social Court in Gotha had found a number of sanctions imposed to

be unconstitutional and had referred the matter to the Federal Constitutional Court. If those reports were accurate, he would appreciate information on the progress of the case before the Court.

32. The use by employers of the 18-month employment cap for temporary workers to avoid recruiting permanent workers appeared to contradict one of the main aims of the 2017 Act on Temporary Agency Work. He would welcome the delegation's views on that observation.

33. **Ms. Shin** said that, during the consideration of the State party's fifth periodic report (E/C.12/DEU/5) in 2011, the delegation had informed the Committee that the shortcomings in the care system had prompted the federal Government to modify it to facilitate the provision of care in a domestic as opposed to an institutional setting. She asked what progress had been made in that transition and how the State party ensured that the basic rights of care recipients and caregivers were protected and respected in all settings. She would also be interested to know more about the typical profile of professional carers in Germany, the reasons for the current shortage of professional carers and how the State party intended to overcome it. She also wished to know whether there were any incentives for domestic caregivers.

34. The Committee had received information to the effect that intersex children were still subjected to medically unnecessary operations, which could have serious long-term consequences for their health and require them to undergo lifelong treatment. She asked whether such operations were prohibited and, if not, whether they took place with parental consent and whether there were guidelines for medical staff on performing such operations.

35. She understood that, following the decision by the Federal Constitutional Court to permit a third gender category known as "Diverse" to be used in civil status records, intersex and transgender persons who had already undergone surgery still had to provide medical proof in order to be registered under that category. She asked whether it was a legal requirement to provide such proof and, if so, whether the State party had considered abolishing it, since it was effectively a bar to self-identification.

36. **Ms. Liebenberg** said that she wished to know whether there was any information available or whether studies had been carried out regarding the impact of foreign ownership of residential properties in Germany, and particularly its impact on the accessibility of housing. To what extent was speculation in residential accommodation affecting the availability and affordability of housing?

37. Approximately one fifth of German households, particularly poor households receiving social security benefits, were experiencing energy poverty and many households had lost their power because of unpaid bills. In that regard, she wondered whether the Government had contemplated measures to subsidize the costs of energy purchased from private electricity companies or to prevent people who were unable to pay their electricity bills from receiving poor credit ratings. Would the Government consider a voucher scheme to enable poor households to purchase energy-efficient appliances?

38. **Mr. De Schutter** said that some poor families did not claim child benefits because they did not have the necessary information, were unable to fulfil the administrative requirements or wished to avoid contact with social services. As the delegation had referred to an intention to remove bureaucratic obstacles to claiming child benefits, he wished to know what those obstacles were and how the Government viewed the low uptake of child benefits among poor families.

39. The delegation had identified privatization and the delegation of competences to federal states as factors in the significant decrease of public funding for housing. Consequently, he would appreciate clarification as to whether the tables on public expenditure by area in the State party's replies to the list of issues referred to public expenditure at all levels of government.

The meeting was suspended at 4.30 p.m. and resumed at 4.40 p.m.

40. **Mr. Boehning** (Germany) said that victims of human rights violations allegedly committed by German companies had access to German courts and that the plaintiffs in

such cases could request legal aid. Previous cases included complaints brought against the textile manufacturer KiK and the energy supplier RWE. The Government did not intend to introduce a collective complaint system for groups of plaintiffs.

41. As studies had indicated that many people did not receive the minimum wage, a thorough evaluation of the situation would be carried out in 2020. The Ministry of Labour and Social Affairs would attempt to determine how many employment relationships were not covered by the minimum wage, and wage requirements would be more strictly enforced. It was illegal for businesses not to pay their employees the minimum wage and all working hours must be recorded properly. Individual employees receiving less than the minimum wage were entitled to take legal action.

42. All domestic workers, including live-in carers, were subject to compulsory social insurance payments and were covered by statutory occupational accident insurance and minimum wage legislation. Such workers had access to complaints mechanisms and could take legal action against their employers or inform the Federal Customs Administration or the Federal Anti-Discrimination Agency if their right to fair treatment had been violated. While it was difficult for the Customs Administration to monitor working conditions in private homes, municipal supervisory mechanisms could be used to assess such employment relationships.

43. **Mr. Wilhelms** (Germany) said that the increase in occupational accidents in agriculture was related to the fact that the number of farms with statutory accident insurance had fallen since 2015. However, the number of people covered by social security had increased over the same period.

44. **Mr. Boehning** (Germany) said that the severe shortage of staff in some sectors, particularly the care sector, had made it necessary to hire foreign workers. A framework was being developed by the Federal Ministry of the Interior and the Federal Ministry of Labour and Social Affairs to ensure that the hiring process respected human rights precepts; in the health sector, for example, due account was taken of the World Health Organization Code of practice on the international recruitments of health personnel. The country did not have an immigration law, but the Government wished to coordinate the hiring practices in the various sectors of the economy.

45. The percentage of lawsuits in which sanctions were successfully challenged would be verified at a later date. Only the Federal Constitutional Court could categorically state that any given sanctions were unconstitutional, and it could be difficult to determine the dominant legal opinion on sanctions.

46. It was not possible to provide an assessment of the Act on Temporary Agency Work, as its impact was not yet clear. However, it was assumed that it had had a positive effect because employers had been negotiating temporary work contracts with trade unions. While some employers would try to avoid the new regulations governing temporary work, attempts were being made to ensure compliance with the rules.

47. There was currently no overarching strategy addressing caregivers and the provision of care. However, the Government recognized that it was necessary to improve inpatient care facilities and provide greater support to people receiving outpatient care. Although there was a demand for foreign care workers, the shortage of carers should be solved by offering higher wages and providing better training and working conditions, rather than by relying on immigration. The demand for care could also be addressed by increasing the working hours of care workers, since approximately 80 per cent of nurses and carers worked part-time.

48. **Mr. Dietz** (Germany) said that some 70 per cent of older persons were cared for by their families, with the remaining 30 per cent in care homes. The Government wished to expand the community-based care system, as called for by the public. Since the most recent universal periodic review of Germany, the benefits paid under long-term health-care insurance had increased, benefits for day-care institutions for older persons had doubled, and the number of people working in the care of older persons had increased, although more carers were needed. At present, approximately 6.8 per cent of carers came from abroad, with half from the European Union. However, the demand for carers should not be

addressed by immigration but rather by promoting training and increasing the number of trainees by 10 per cent each year.

49. **Mr. Boehning** (Germany) said that there were no available data on intersex children undergoing surgery and no plans to begin collecting such data. Under the coalition agreement, surgical interventions could only be carried out on intersex children if there was danger to the life of the child; there were plans to legislate that requirement, in addition to the need for objective medical opinions. The decision to make a surgical intervention was often taken by parents without waiting for their child to develop, and there was therefore a need to provide additional advice for the parents of intersex children, in cooperation with the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth.

50. **Mr. Kamperhoff** (Germany) said that there was an ongoing legislative process to develop documentation enabling children to be recognized as intersex. A bill had also been drafted that would enable children to change their gender from the age of 14 years without requiring parental consent, although it had not yet been clarified as to whether any medical opinions or documentation would be needed.

51. **Mr. Boehning** (Germany) said that data on foreign investments in the property market in Berlin had not been and would not be collected. Reports of speculation at the municipal level could be caused by a general shortage of housing, and any investors engaging in speculation were likely to be German.

52. **Ms. Paschmanns** (Germany) said that, regarding energy poverty, the need to secure a household's energy supply was taken into consideration when awarding livelihood assistance benefits and basic needs assistance. However, while reasonable heating costs were fully reimbursed as part of basic income support for jobseekers and social assistance benefits, other household energy use was not. Households struggling to pay their energy bills were able to take out loans to cover their costs, and it was possible to receive a grant if the loss of energy would create a situation functionally equivalent to homelessness, such as if a household lost light, heat or the ability to cook. Households received numerous warnings before their power was cut off, and many were therefore able to avoid losing power.

53. **Mr. Boehning** (Germany) said that there were three kinds of child benefit in Germany: an education and participation package organized by the Ministry of Labour and Social Affairs, for which children and young people could apply to access education and participate in society; child benefits, which were administered by the Ministry of Finance and to which migrants from the European Union were entitled when they had a job with mandatory social security contributions; and a supplementary child benefit, which was particularly important to single parents.

54. **Mr. Kamperhoff** (Germany) said that child benefits and the supplementary child benefit primarily targeted low-income families and had strict eligibility criteria based on the income of the family or single mother applying for it. Those criteria contributed to the low level of applications. Consequently, as part of a new package of measures to combat child poverty, the benefit application process would be simplified, the supplementary child benefit would increase, and money that children from single-parent families received from their fathers would no longer be deducted from the supplementary benefit.

55. **Mr. Boehning** (Germany) said that there was an ongoing debate about child support and the role of fathers; it was important to ensure that the different systems did not contradict each other, while making sure that fathers took responsibility.

56. **Mr. Abashidze** (Country Task Force) said that, although the existing education system included targeted and individual support to help all pupils achieve the best possible school-leaving qualification, the number of children dropping out of school or leaving without a diploma had risen since 2013, largely affecting those from poorer backgrounds. Children with a migrant background were also twice as likely to drop out of school as their ethnic German peers. He wished to know what measures were being taken at the federal level to eliminate those differences.

57. The right of child refugees and asylum seekers of compulsory school age to access education was implemented differently in individual federal states, and some refugee

children from so-called safe countries of origin had no access to the school system for indefinite periods as they were forced to remain in reception centres. He would appreciate information on the steps being taken at the federal level to unify rules on access to the school system and to address obstacles at the level of the federal states.

58. One welcome trend was that the rates of children with disabilities in education had risen since the ratification of the Convention on the Rights of Persons with Disabilities. However, he wondered whether it was true that the number of pupils with disabilities excluded from regular education remained high and, if so, what caused the high exclusion rate.

59. It was notable that the federal states were primarily responsible for education, but that the federal Government was responsible for implementing the Covenant. It could therefore be necessary to introduce a federal mechanism to address legislative gaps between the different levels of government; such a step could help to ensure that meals were provided in schools, for example.

60. Some federal states, particularly in eastern Germany, struggled to hire qualified teachers, because salaries were low in comparison to those in the western part of the country. He would appreciate information about whether there were any plans to eliminate such wage differences.

61. Regarding minorities that did not have official status, he wished to know what the criteria were for recognition as a national minority, whether decisions not to grant official status could be appealed and whether there were any action plans, programmes or funds for large but unrecognized minorities.

The meeting was suspended at 5.20 p.m. and resumed at 5.25 p.m.

62. **Ms. Baun** (Germany) said that the results of the first cycle of the public availability of the Programme for International Student Assessment (PISA) test run by the Organisation for Economic Co-operation and Development had revealed just how much German students lagged behind and how school-leaving requirements differed from one federal state to another. While there was still room for improvement, the federal states had done their utmost to correct the situation and make the system less rigid. Fostering the development of each student had become a central aspect of teacher training, teacher-parent cooperation had been enhanced and the number of dropouts had fallen. In addition, there were more all-day schools, making it easier to transfer from one establishment to another.

63. **Ms. Wittenberg** (Germany) said that, in the past decade, more students had been aiming for the higher secondary leaving certificate, which could also be completed in vocational schools.

64. **Ms. Baun** (Germany) said that several programmes, including language courses, were in place to improve the academic achievement of children with a migration background. In 2010, the national Standing Conference of Ministers of Education and Cultural Affairs had agreed on a special support strategy for those children. The less rigid system also facilitated the integration of disadvantaged groups. The Standing Conference had set the goal of halving the dropout rate among students of all backgrounds. Although the goal had yet to be reached and there had been a slight increase in dropouts in 2016, attributable to the influx of migrant children, the situation was moving in the right direction.

65. **Ms. Wittenberg** (Germany) said that the education system had had to integrate large numbers of refugee children since 2015, so various measures, including in-classroom assistance, had been put in place to help poor performers complete lower secondary school. The Standing Conference had published a comprehensive report on the issue in 2017, which was available online.

66. **Mr. Schroeder** (Germany) said that several programmes had been launched in cooperation with job centres to help with the transition from school to the labour market. One programme catered to young people who had left school but had not entered a vocational training centre. Language courses were also available.

67. **Ms. Baun** (Germany) said that there was consensus among the federal states that education was key to integration and that it was necessary to learn German quickly. Accordingly, the Standing Conference focused on those aspects in its programmes for refugees. At the beginning of the influx of migrants in 2015, it had been a challenge to find sufficient teachers and space; however, the issue currently being faced was that of organizing the transition to regular classrooms. Refugee children were required to enrol in school. In federal states where admission could not take place until a child moved to private accommodation, teachers were assigned to reception centres. The federal states were successfully expanding vocational training to cater for young refugees who were no longer of compulsory school age.

68. **Ms. Wittenberg** (Germany) said that compulsory enrolment in school was a way of countering discrimination against children with disabilities. Since Germany had ratified the Convention on the Rights of Persons with Disabilities, all the federal states had amended their education laws. Increasing numbers of children with disabilities were enrolling in mainstream schools. Nevertheless, parents had a constitutional right to decide how their children would be educated; that was why some children with disabilities remained in special schools, which had very good facilities and specially trained teachers.

69. **Ms. Stoll** (Germany) said that the Government had adopted the second national action plan on the implementation of the Convention on the Rights of Persons with Disabilities, which included 13 areas of action and dozens of new measures building on those of the first action plan, notably with regard to awareness-raising and data collection. While the federal Government advocated inclusive education, it could do little more than encourage and support the federal states to follow suit because education was a state competence. Nevertheless, the Federal Ministry of Education and Research did provide in-service training for special needs teachers and counselling for students with disabilities.

70. **Ms. Baun** (Germany), referring to the shared responsibility for implementation of the Covenant between the federal Government and the federal states, said that there were no plans to change the division of powers. Nevertheless, in areas that required improvement, efforts needed to be made to ensure close cooperation between the federal and state authorities. She was not aware of a salary-driven lack of qualified teachers in the eastern states. It was true, however, that increasing numbers of people with degrees in different fields were becoming teachers, a trend that was expected to continue.

71. **Ms. Wittenberg** (Germany) said that, owing to the surge in students, the recruitment of teachers was problematic countrywide.

72. **Ms. Baun** (Germany) said that the language and culture of national minorities were promoted and that the media broadcast programmes on that topic. For example, the State of Schleswig-Holstein funded schools for the Danish minority.

73. **Ms. Bender** (Germany) said that there was no definition under international law of what constituted a national minority. In Germany, for a minority to receive support it had to have a distinct language and identity and to have been present in the country for an extended period. That being said, the right to participate in cultural life was guaranteed under the Basic Law.

74. **Mr. Dasgupta** (Country Rapporteur) said that the Committee was grateful for the candid and detailed replies to its questions. The State party set very high standards for itself in the sphere of human rights, so it followed that its performance should be measured against those exacting standards. The Committee would be issuing recommendations on matters that it believed required further attention.

75. **Ms. Baun** (Germany) said that she hoped the delegation had succeeded in demonstrating the importance that Germany attached to the Covenant and its proper implementation, despite the continuous emergence of new challenges. The delegation was grateful for the opportunity to explain the country's complex rules and systems and took note of child poverty and the right to affordable housing as central issues. There was political support for the ratification of the Optional Protocol, but it was not a straightforward process.

The meeting rose at 6 p.m.